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**ALCOHOLIC LIQUOR:
CONSTITUTIONAL LAW:**

Section 26c of the Liquor Control Act is constitutional and enforceable under the provisions of Section 1 and 50 thereof.

No. 4634

February 23, 1968.

Honorable Stanley Novak
State Senator
Capitol Building
Lansing, Michigan

This is in reply to your recent letter in which you refer to the Michigan Liquor Control Act (Act 8, P.A. of 1933 (Ex. Sess.) as amended)¹ and request my opinion as to the following queries as quoted below.

"1. Is Section 26c in conflict with the State Constitution?"

1. Section 26c was added to amend Act 8, supra, by Act 295, P.A. of 1949, as a new section. It reads:

"No person shall maintain, operate, lease or otherwise furnish to other persons any premises or place which is not licensed under this act, wherein such other persons may engage in the drinking of alcoholic beverages, for a fee or for any other consideration, including the sale of food, mixers, ice or other fluids used with alcoholic drinks or the storage of alcoholic liquors: Provided, That the provisions of this section shall not apply to any hotel nor to any licensee under the provisions of this act: Provided further, That the provisions of this section shall not be construed to repeal or amend the provisions of Section 26b of this act."

The constitutionality of Section 26c was challenged in *Beacon Club v. Kalamazoo County Sheriff*, 332 Mich. 412 (1952). The Supreme Court ruled that Section 26c was constitutional.² Among other claims of unconstitutionality which were rejected were the contentions that the language of Section 26c deprived owners and operators of unlicensed premises of property rights and denied such persons equal protection of the laws guaranteed by both the Michigan and the United States Constitutions. The Court also ruled that the exclusionary provisions of Section 26c which except hotels from the force and effect thereof were valid. While the *Beacon Club* case was decided prior to the adoption of the Michigan Constitution of 1963, the result would be the same thereunder.

It is therefore concluded that Section 26c is constitutional.

¹ C.L. 1948 § 436.1, et seq.; M.S.A. 1957 Rev. Vol. and 1965 Supp., § 18.971, et seq.

² Appeal dismissed for want of a substantial federal question, 343 U.S. 971; rehearing denied, 344 U.S. 848. (See *Mutchall v. City of Kalamazoo*, 323 Mich. 215, where the constitutionality of a local "bottle club" ordinance was upheld.)

"2. Is it enforceable?"

2. The provisions for the enforcement of Act 8, supra, are set forth in Section 50 thereof which is concerned with penalties. The language pertinent to your inquiry reads:

"Sec. 50. Any person, other than persons required to be licensed under this act, who shall violate any of the provisions of this act shall be guilty of a misdemeanor.

"* * * .

"It is the intent of the legislature that the court, in imposing punishment under the provisions of this section, should discriminate between casual or slight violations and habitual sales of alcoholic liquor or attempts to commercialize violations of this act or any of the rules or regulations of the commission promulgated hereunder."

I have not given consideration to the matter as to whether conduct offensive to the language of Section 26c may constitute a nuisance, either public or private, and thus be subject of injunctive relief, for the reason that the facts and circumstances of each case must necessarily be determinative of the issue.

"3. Who is responsible for the enforcement?"

3. Provisions for enforcement of Act 8, supra, are set forth in Section 1 of the Act which in pertinent part reads:

"Section 1. * * *

"The sheriffs of the several counties and their deputies and the village marshals, constables, officers or members of the village or city police and members of the department of state police, and inspectors of the commission, are hereby empowered and it is hereby made their duty to see that the provisions of this act and the rules and regulations made or authorized by said commission are enforced within their respective jurisdictions. It shall be their special duty to use their utmost efforts to repress and prevent crime and the violation of any of the provisions of this act. Any officer within the above enumeration who shall wilfully neglect or refuse to perform the duties imposed upon him by this section shall be guilty of a misdemeanor and upon conviction shall be fined not to exceed five hundred [500] dollars or imprisoned in the county jail not more than ninety [90] days, or both."

Hence, it is concluded that enforcement of the provisions of Section 26c rests with the persons mentioned above.

FRANK J. KELLEY,
Attorney General.